IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF APPEALS

In re Patent Application of: **THOMSON ET AL.**	
Serial No. **09/658,389**	Examiner: **C. KIM**
Filing Date: **SEPTEMBER 8, 2000**	Art Unit: **3682**
For: **BICYCLE STEM INCLUDING ENHANCED CLAMP AND ASSOCIATED METHODS**	Attorney Docket No. **57008**
	Telefacsimile No. **703-872-9327**

APPELLANT'S APPEAL BRIEF

Mail Stop Appeal Brief
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Submitted herewith is Appellant's Appeal Brief (in triplicate). Authorization is given to charge the requisite $165.00 fee for filing a brief to Deposit Account No. **01-0484**. If any additional extension and/or fee is required, or if any additional fee for claims is required, charge Account No. **01-0484**.

(1) REAL PARTY IN INTEREST

The real party in interest for the present application is the assignee, L.H. Thomson Company, Inc.

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(2) **RELATED APPEALS AND INTERFERENCES**

Co-pending application No. 09/658,509 filed September 8, 2000 by the present assignee, includes a provisional obviousness-type double patenting rejection which may directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal. There are no other related appeals or interferences for the present application.

(3) **STATUS OF CLAIMS**

All of Claims 1-76 are pending in the present application. Claims 7, 11, 14, 16, 23, 32 and 39-76 are withdrawn from consideration. Claims 1-6, 8-10, 12, 13, 15, 17-22, 24-31 and 33-38 directed to the elected species and are rejected. Accordingly, all of Claims 1-6, 8-10, 12, 13, 15, 17-22, 24-31 and 33-38 are the subject of this appeal.

(4) **STATUS OF AMENDMENTS**

No amendments were proposed after the final Office Action of May 1, 2003. The claims in the Appendix incorporate all prior amendments.

(5) **CONCISE SUMMARY OF THE INVENTION**

Referring to FIGS. 4-12 and pages 11-16 of the specification, for example, the present invention is directed to a bicycle stem **30** including a steering tube clamp **40**.

A prior art steering tube clamp **140** is shown in FIGS. 4 and 5 and includes a pair of cooperating clamp members **141a, 141b**

aligned in side-by-side relation. The prior art steering tube clamp **140** also includes respective portions defining an imaginary cylinder, and a recess, defined by respective recesses **143a, 143b**, for the steering tube. Each clamp member **141a, 141b** also has a fastener receiving passageway **142a, 142b** therein to receive a single fastener, such as a bolt, for example. The fastener receiving passageways **142a, 142b** are aligned along the axis **145** defined by the imaginary cylinder.

This prior art arrangement of the fastener receiving passageways **142a, 142b** along the axis **145** results in a relatively shallow recess provided by the combination of recesses **143a, 143b**. For example, this shallow arrangement may provide contact of one recess **143a** of less than about 40 degrees for the angle **A** as shown in FIG. 5. The total clamp contact onto the steering tube is then less than about 80 degrees. This may result in a weak connection to the steering tube and/or damage to the steering tube, for example.

As shown in the embodiments of the invention in FIGS. 6-12 (FIGs. 1, 6 and 7 reproduced below), the stem **30** in some embodiments advantageously includes a steering tube clamp **40, 40' 40"** with cooperating clamp members **41a, 41b; 41a', 41b'; 41a", 41b"** aligned in side-by-side relation and comprising respective outer surface portions defining an imaginary cylinder and a recess therein for the steering tube. Moreover, each clamp member **41a, 41b; 41a', 41b'; 41a", 41b"** also has at least one fastener receiving passageway therein **42a, 42b, 42c, 42d; 43a', 43b'; 43a", 43b"** offset a predetermined distance from an axis **45, 45', 45"** defined by the imaginary cylinder.

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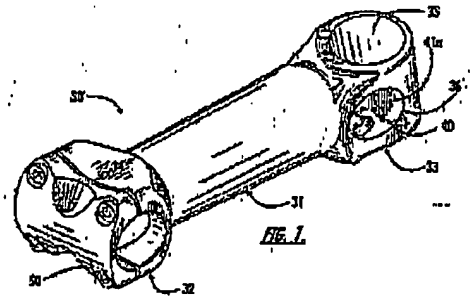

FIG. 1.

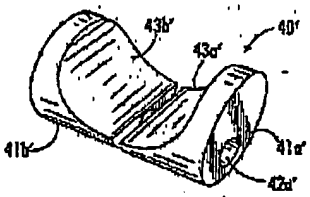

FIG. 6.

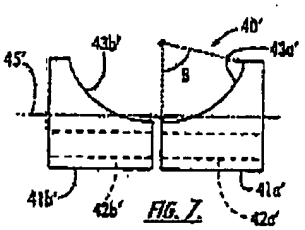

FIG. 7.

The arrangement of the offset is also illustratively in the direction away from the recess for the steering tube. This configuration provides for a greater area and/or angle of contact between the steering tube clamp **40, 40' 40"** and the steering tube. Many of the disadvantages of the prior art steering tube clamp **140** are overcome in accordance with this aspect of the present invention.

The offset may range from several millimeters to 10 or more millimeters depending on the size of the steering tube and other considerations as will be appreciated by those skilled in the art. The offset permits the angle of contact provided by a

recess of a clamp member to be greater than about 45 degrees in some embodiments, greater than about 60 degrees in other embodiments, and even greater than 90 degrees in other preferred embodiments. In other words, the recesses together may be greater than 90, 120 and even 180 degrees.

(6) ISSUES

The issues presented on appeal are: whether Claims 8, 9, 19, 28 and 33-38 are enabled by the specification under 35 U.S.C. §112, first paragraph; whether Claims 1-6, 10, 12, 13, 15, 17, 18, 20-22, 24-27 and 29-31 are patentable under 35 U.S.C. § 103 in view of Cheng (U.S. 5,477,747) taken alone or in combination with Roddy (U.S. 5,881,606); and whether Claims 1-3, 10, 12, 13, 15, 17, and 20-22 are patentable under the doctrine of obviousness-type double patenting over Claims 1-27 of co-pending Patent Application Serial No. 09/658,509 in combination with the Cheng patent.

(7) GROUPING OF CLAIMS

For the purposes of addressing the rejections under 35 U.S.C. §103 and obviousness-type double patenting, the grouping of the claims is: Claims 1-6, 8-10, 12, 13, 15, 17-22, 24-31 and 33-38 stand or fall together as a group.

(8) ARGUMENT

A) The Claim Rejection Under 35 U.S.C. §112, First Paragraph

The Examiner rejected Claims 8, 9, 19, 28, and 33-38 as allegedly containing subject matter which was not described in

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the specification in such a way as to enable one skilled in the art to make and/or use the invention. More particularly, the Examiner alleges that "the specification does not provide adequately or describe in such a clear and concise way as to how the clamp is moved in a confined and tight clamp receiving passageway as shown in FIGS. 2 and 13".

Appellants emphasize that neither the claims nor the specification recite a "confined and tight clamp receiving passageway" as alleged by the Examiner. Indeed, the specification and drawings specifically disclose that the steering tube clamp **40**, with canted fastener receiving passageways **42b** and **42c** (e.g. as illustrated in FIGs. 10, 11, 14A and 14B), is accommodated in the clamp receiving passageway **36** as can be clearly seen in FIGs. 1 and 2. Moreover, the specification sets forth (pages 15 and 16)

> As shown in FIG. 14A, the steering tube clamp **40** illustratively includes a set of fastener receiving passageways **42b**, **42c** which are canted at a predetermined angle **D** from parallel to the axis **45** of the imaginary cylinder. ...For example, the predetermined angle **D** may be in a range of about one-half to five degrees and, more preferably about one to three degrees.

Accordingly, the specification describes the steering tube clamp **40**, with fastener receiving passageways **42b** and **42c** canted at an angle, e.g. about <u>one to three degrees</u>, accommodated in the clamp receiving passageway **36**, and with fasteners/bolts **46a** and **46b** engaged in the fastener receiving passageways.

The Examiner continues to erroneously refer to "the canting of the clamp **40**" in his arguments. It is once again pointed out that it is the fastener receiving passageways **42b**, **42c** (FIG.

14A) that are canted, e.g. a half degree, to allow tightening with less likelihood of binding when the clamp members engage the steering tube and are urged outwardly by the tube. The Examiner appears to be puzzled by the illustration in FIG. 14A where the canting angle D has been exaggerated for ease of explanation. Again, as described in the specification on page 16, such a canting angle D may be in a range of about one-half (0.5) to five (5) degrees.

The purpose of the requirement that the specification describe the invention in such terms that one skilled in the art can make and use the claimed invention is to ensure that the invention is communicated to the interested public in a meaningful way. The information contained in the disclosure of an application must be sufficient to inform those skilled in the relevant art how to both make and use the claimed invention; but, detailed procedures for making and using the invention are not necessary if the description of the invention itself is sufficient to permit those skilled in the art to make and use the invention.

As the Examiner should be aware, the standard for determining whether the specification meets the enablement requirement is that the claimed invention be enabled so that any person skilled in the art can make and use the invention without undue experimentation. In other words, the test of enablement is whether one reasonably skilled in the art could make or use the invention from the disclosure coupled with information known in the art without undue experimentation.

As discussed in MPEP §2164, to make an enablement rejection, the Examiner has the initial burden to establish a

reasonable basis to question the enablement provided for the claimed invention. A specification disclosure which contains a teaching of the manner of making and using an invention in terms which correspond in scope to those used in describing and defining the subject matter sought to be patented must be taken as being in compliance with the enablement requirement of 35 U.S.C. 112, first paragraph, unless there is a reason to doubt the objective truth of the statements contained therein which must be relied on for enabling support. It is incumbent upon the Examiner, whenever an enablement rejection is made, to explain why he doubts the truth or accuracy of any statement in the supporting disclosure and to back up assertions of his own with acceptable evidence or reasoning which is inconsistent with the contested statement. Otherwise, there would be no need for Applicants to go to the trouble and expense of supporting the presumptively accurate disclosure. See In re Marzocchi, 439 F.2d 220, 224, 169 USPQ 367, 370 (CCPA 1971).

The Examiner's assertion that "it would be almost impossible to engage the second fastener receiving passageway 42c without breaking the passageway 36 or the clamp members 40" is made without any acceptable evidence or reasoning that is inconsistent with the teachings of the present specification. Furthermore, in the Examiner's remarks on pages 8 and 9 of the final Office Action, the Examiner again erroneously refers to the "canting of the clamp **40**" and "the space required" for the clamp members to go from the position in FIG. 14A to the position in FIG. 14B. It is again noted that the canting angle **D** has been exaggerated in the illustration in FIG. 14A for ease of explanation. Again, as described in the specification on page

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16, such a canting angle **D** may be in a range of about one-half (0.5) to five (5) degrees.

Accordingly, Appellants maintain that the specification describes the subject matter of the above referenced claims in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the claimed invention, without any undue experimentation.

B. The Prior Art Rejection

Claims 1-6, 10, 12, 13, 15, 17, 18, 20-22, 24-27 and 29-31 are rejected in view of Cheng (U.S. 5,477,747) taken alone or in combination with Roddy (U.S. 5,881,606) for the reasons set forth on pages 5-9 of the final Office Action. Appellants contend that Claims 1-6, 10, 12, 13, 15, 17, 18, 20-22, 24-27 and 29-31 clearly define over the cited references, and in view of the following remarks, reversal of the Examiner is requested.

Independent Claims 1 and 17 recite a steering tube clamp in the clamp receiving passageway and comprising a pair of cooperating clamp members aligned in side-by-side relation and comprising respective outer surface portions defining an imaginary cylinder and a recess therein for the steering tube. Furthermore, each clamp member also has at least one fastener receiving passageway therein offset a predetermined distance from an axis of the cylinder. Similarly, independent Claim 24 includes a pair of cooperating clamp members aligned in side-by-side relation and comprising respective outer surface portions defining an imaginary cylinder and a recess therein for the steering tube, with each clamp member having a plurality of

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fastener receiving passageways therein offset a predetermined distance from an axis of the cylinder.

The claimed combinations of features are not fairly taught or suggested in the cited references and patentably define over the cited references.

The Examiner has now relied on the Cheng patent as allegedly disclosing a bicycle stem having a steering tube clamp that includes a pair of clamp members having at least one fastener receiving passageway therein offset a predetermined distance from an axis of an imaginary cylinder defined by outer surface portions of the clamp members. However, as discussed above, the claims recite that outer surface portions of the clamp members define the imaginary cylinder, while the clamp members include at least one fastener receiving passageway therein offset a predetermined distance from an axis of the cylinder.

As illustrated in FIGs. 1 and 2 of the Cheng patent (reproduced below), the fastener receiving passageway **30** passes directly along the axis of the cylinder defined by the outer surface portions of the clamp members **28**. On page 6 of the Office Action, the Examiner points to the cross-sectional view of FIG. 2 of Cheng to support his position that the passageway is offset from a center axis of the clamp members. However, the Examiner has mischaracterized the actual teachings of the reference in view of the claims.

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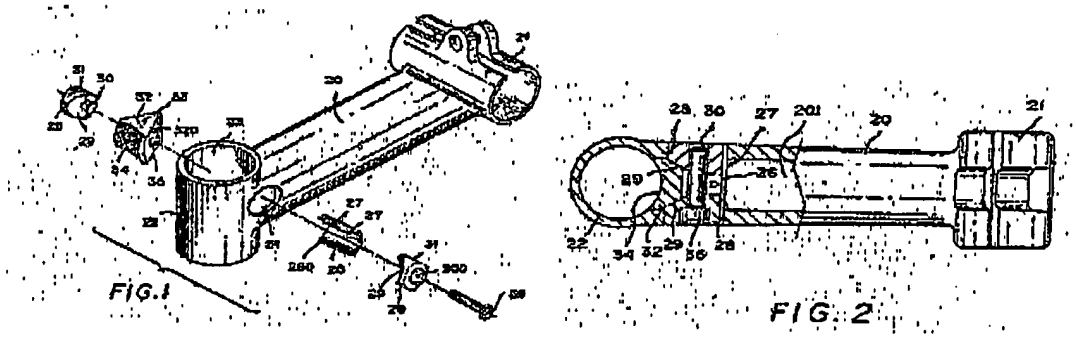

FIGs. 1 and 2 of Cheng

More specifically, Appellants point out that the clamp members **28** of Cheng include outer surface portions and shoulders **31** defining reduced diameter portions for accommodating a partition member **26** (see the clamp member **28** in the lower right side of FIG. 1 of Cheng). The partition member **26** and the reduced diameter portion can be seen in the cross-sectional view of FIG. 2 relied upon by the Examiner. As can be seen from the actual teachings of the Cheng reference, the outer surface portions of the clamp members **28** define a cylinder having a center axis for which the passageway **30** is aligned. If the Examiner is relying on the reduced diameter portions of the clamp members **28** as meeting the claimed feature of the outer surface portions defining an imaginary cylinder, then the passageway **30** is still aligned with a center axis thereof. Under either interpretation of the Cheng patent, it is clear that the fastener receiving passageway thereof is not offset from the axis, and that independent Claims 1, 17 and 24 define over the Cheng patent.

In the Examiner's remarks on page 10 and 11 of the final Office Action, the Examiner asserts that Appellants argument

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"appears to concentrate on the notion that the definition of the word 'cylinder' is nothing but a circular (perfect circle) cylinder." Appellants specifically traverse the Examiner's assertion. Indeed, Appellants arguments concentrate on the fact that the claims clearly set forth that the outer surface portions of the cooperating clamp members define a cylinder, and that the fastener receiving passageway is offset from an axis of such a cylinder. As can be clearly seen in the Cheng drawings, the outer surface portions of the Cheng clamp members **28** may define two cylinders, one larger than the other, and each having a passageway aligned with the center axis. Contrary to the Examiner's assertion on page 11 of the Office Action, a "cylinder", circular or oval, cannot be defined by two different sized arcs connected by a step or shoulder, as shown in Cheng. Such assertions are a good indication of the undue difficulty experienced by Appellants with this Examiner during the lengthy prosecution of the present application.

The Examiner has relied on the Roddy patent as allegedly showing a handlebar clamping portion and a steering tube clamping portion being integrally formed as a monolithic unit. However, nothing in the Roddy patent makes up for the deficiencies pointed out above with respect to the Cheng patent.

There is simply no teaching or suggestion in the cited references to provide the combination of features as claimed. Accordingly, for at least the reasons given above, Appellants maintain that the cited references do not disclose or fairly suggest the invention as set forth in Claims 1, 17 and 24. Furthermore, no proper modification of the teachings of these

references could result in the invention as claimed. Thus, the rejections under 35 U.S.C. §102 and §103 should be withdrawn.

C. The Double Patenting Rejection

The Examiner has provisionally rejected Claims 1-3, 10, 12, 13, 15, 17, and 20-22 under the doctrine of obviousness-type double patenting over Claims 1-27 of co-pending Patent Application Serial No. 09/658,509 in combination with the Cheng patent. Appellants again maintain that the present claims are directed to patentably distinct aspects of the bicycle stem and that there will exist no improper timewise extension of the right to exclude. Therefore the double patenting rejection is improper and should be withdrawn.

Additionally, independent Claims 1 and 17 recite that respective outer surface portions of the clamp members define the imaginary cylinder and a recess therein for the steering tube, with each clamp member also having at least one fastener receiving passageway therein offset a predetermined distance from an axis of the cylinder. The claims of the co-pending application do not recite such a feature. Also, the Cheng patent does not disclose or teach such a feature, as discussed in detail above with respect to the rejections under 35 U.S.C. §102 and §103. For these additional reasons, the double patenting rejection should be properly withdrawn.

CONCLUSIONS

In view of the substantive arguments presented above, it is submitted that all of the claims, namely Claims 1-6, 8-10, 12, 13, 15, 17-22, 24-31 and 33-38, are patentable. Accordingly,

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Appellants respectfully request that all of the rejections be reversed.

Respectfully submitted,

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CERTIFICATE OF FACSIMILE TRANSMISSION

I HEREBY CERTIFY that the foregoing correspondence has been forwarded via facsimile number **703-872-9327** to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 this 6th day of October, 2003.

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APPENDIX INCLUDING THE CLAIMS ON APPEAL
FOR U.S. PATENT APPLICATION SERIAL NO. 09/658,389

1. (previously amended) A bicycle stem for connecting a bicycle handlebar to a bicycle steering tube, the bicycle stem comprising:

a body portion having opposing first and second ends;

a handlebar clamping portion connected to the first end of said body portion;

a steering tube clamping portion connected to the second end of said body portion and having a tubular shape defining a steering tube receiving passageway therethrough, said steering tube clamping portion also having a clamp receiving passageway therein transverse to the steering tube receiving passageway and in communication therewith;

a steering tube clamp in the clamp receiving passageway and comprising

a pair of cooperating clamp members aligned in side-by-side relation and comprising respective outer surface portions defining an imaginary cylinder and a recess therein for the steering tube, each clamp member also having at least one fastener receiving passageway therein offset a predetermined distance from an axis defined by the imaginary cylinder, and

at least one fastener extending between corresponding fastener receiving passageways of said pair of clamp members for urging said clamp members together to engage the steering tube and thereby secure the bicycle stem to the steering tube.

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2. (original) A bicycle stem according to Claim 1 wherein said fastener receiving passageways are offset the predetermined distance from the axis of the imaginary cylinder in a direction away from the recess.

3. (original) A bicycle stem according to Claim 1 wherein said body portion, handlebar clamping portion and steering tube clamping portion are integrally formed as a monolithic unit.

4. (original) A bicycle stem according to Claim 1 wherein said at least one fastener comprises a plurality of fasteners.

5. (original) A bicycle stem according to Claim 4 wherein said plurality of fasteners comprises first and second bolts, each having an enlarged head and a threaded shaft extending outwardly therefrom.

6. (original) A bicycle stem according to Claim 5 wherein said first and second bolts extend in opposite directions.

7. (withdrawn).

8. (original) A bicycle stem according to Claim 1 wherein said fastener receiving passageways are also canted at a predetermined angle from parallel to the axis of the imaginary cylinder.

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9. (original) A bicycle stem according to Claim 8 wherein the predetermined angle is in a range of about one-half to five degrees.

10. (original) A bicycle stem according to Claim 1 wherein the recess for the steering tube extends for greater than a predetermined angle.

11. (withdrawn).

12. (original) A bicycle stem according to Claim 1 wherein said pair of clamp members each have a same shape.

13. (original) A bicycle stem according to Claim 1 wherein each clamp member comprises an end having a circular shape.

14. (withdrawn).

15. (original) A bicycle stem according to Claim 1 further comprising a handlebar clamping member cooperating with said handlebar clamping portion to clamp the bicycle handlebar therebetween.

16. (withdrawn).

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17. (previously amended) A bicycle stem for connecting a bicycle handlebar to a bicycle steering tube, the bicycle stem comprising:

a body portion having opposing first and second ends;

a handlebar clamping portion connected to the first end of said body portion;

a steering tube clamping portion connected to the second end of said body portion and having a tubular shape defining a steering tube receiving passageway therethrough, said steering tube clamping portion also having a clamp receiving passageway therein transverse to the steering tube receiving passageway and in communication therewith;

a steering tube clamp in the clamp receiving passageway and comprising

a pair of cooperating clamp members aligned in side-by-side relation and comprising respective outer surface portions defining an imaginary cylinder and a recess therein for the steering tube, each clamp member also having at least one fastener receiving passageway therein offset a predetermined distance from an axis defined by the imaginary cylinder in a direction away from the recess, and

at least one fastener extending between corresponding fastener receiving passageways of said pair of clamp members for urging said clamp members together to engage the steering tube and thereby secure the bicycle stem to the steering tube;

said body portion, handlebar clamping portion and steering tube clamping portion being integrally formed as a monolithic unit.

18. (original) A bicycle stem according to Claim 17 wherein said at least one fastener comprises a plurality of fasteners.

19. (original) A bicycle stem according to Claim 17 wherein said fastener receiving passageways are also canted at a predetermined angle from parallel to the axis of the imaginary cylinder.

20. (original) A bicycle stem according to Claim 17 wherein the recess for the steering tube extends for greater than a predetermined angle.

21. (original) A bicycle stem according to Claim 17 wherein said pair of clamp members each have a same shape.

22. (original) A bicycle stem according to Claim 17 further comprising a handlebar clamping member cooperating with said handlebar clamping portion to clamp the bicycle handlebar therebetween.

23. (withdrawn).

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24. (previously amended) A bicycle stem for connecting a bicycle handlebar to a bicycle steering tube, the bicycle stem comprising:

a body portion having opposing first and second ends;

a handlebar clamping portion connected to the first end of said body portion;

a steering tube clamping portion connected to the second end of said body portion and having a tubular shape defining a steering tube receiving passageway therethrough, said steering tube clamping portion also having a clamp receiving passageway therein transverse to the steering tube receiving passageway and in communication therewith;

a steering tube clamp in the clamp receiving passageway and comprising

a pair of cooperating clamp members aligned in side-by-side relation and comprising respective outer surface portions defining an imaginary cylinder and a recess therein for the steering tube, each clamp member having a plurality of fastener receiving passageways therein offset a predetermined distance from an axis of the imaginary cylinder, and

a plurality of fasteners extending between corresponding fastener receiving passageways of said pair of clamp members for urging said clamp members together to engage the steering tube and thereby secure the bicycle stem to the steering tube.

25. (original) A bicycle stem according to Claim 24 wherein said plurality of fasteners comprises first and second

bolts, each having an enlarged head and a threaded shaft extending outwardly therefrom.

26. (original) A bicycle stem according to Claim 25 wherein said first and second bolts extend in opposite directions.

27. (original) A bicycle stem according to Claim 24 wherein said body portion, handlebar clamping portion and steering tube clamping portion are integrally formed as a monolithic unit.

28. (previously amended) A bicycle stem according to Claim 24 wherein [said clamp members also comprise portions defining an imaginary cylinder; and wherein] the fastener receiving passageways are also canted at a predetermined angle from parallel to [an] the axis of the imaginary cylinder.

29. (original) A bicycle stem according to Claim 24 wherein the recess for the steering tube extends for greater than a predetermined angle.

30. (original) A bicycle stem according to Claim 24 wherein said pair of clamp members each have a same shape.

31. (original) A bicycle stem according to Claim 24 further comprising a handlebar clamping member cooperating with said handlebar clamping portion to clamp the bicycle handlebar therebetween.

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32. (withdrawn).

33. (previously amended) A bicycle stem for connecting a bicycle handlebar to a bicycle steering tube, the bicycle stem comprising:

a body portion having opposing first and second ends;

a handlebar clamping portion connected to the first end of said body portion;

a steering tube clamping portion connected to the second end of said body portion and having a tubular shape defining a steering tube receiving passageway therethrough, said steering tube clamping portion also having a clamp receiving passageway therein transverse to the steering tube receiving passageway and in communication therewith;

a steering tube clamp in the clamp receiving passageway and comprising

a pair of cooperating clamp members aligned in side-by-side relation and comprising respective outer surface portions defining an imaginary cylinder and a recess therein for the steering tube, each clamp member also having at least one fastener receiving passageway therein canted at a predetermined angle from parallel to an axis of the imaginary cylinder, and

at least one fastener extending between corresponding fastener receiving passageways of said pair of clamp members for urging said clamp members together to engage the steering tube and thereby secure the bicycle stem to the steering tube.

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34. (original) A bicycle stem according to Claim 33 wherein the predetermined angle is in a range of about one-half to five degrees.

35. (original) A bicycle stem according to Claim 33 wherein said body portion, handlebar clamping portion and steering tube clamping portion are integrally formed as a monolithic unit.

36. (original) A bicycle stem according to Claim 33 wherein the recess for the steering tube extends for greater than a predetermined angle.

37. (original) A bicycle stem according to Claim 33 wherein said pair of clamp members each have a same shape.

38. (original) A bicycle stem according to Claim 33 further comprising a handlebar clamping member cooperating with said handlebar clamping portion to clamp the bicycle handlebar therebetween.

39-76. (withdrawn).